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Supreme Court, U.S.
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No._____

**In The**

**SUPREME COURT OF THE UNITED STATES**

**October Term, 1997**

Lemuel Robert Hall,

Petitioner.

Vs.

Darrel Jacobs, Department of Corrections,

State of Florida ,

Respondents.

On petition for Writ of Certiorari

To the United States Court of Appeals

for the Eleventh Circuit

# PETITION FOR WRIT OF CERTIORARI

Lemuel Robert Hall (pro se)

1337 N. Hwy 71

De Queen, Arkansas 71832

(870)-386-7946

37 pp

## QUESTIONS PRESENTED

1. Is it legal to be convicted on a State charge that was nolle prossed 3 days earlier?

2. In a State Trial Transcript, can the body content of the transcript over rule the Court Reporters Certified Case Number?

3. Several years after the court trial, is it legal for the court to say, "We made a mistake on a case number, we really meant for it to be another number?"

4. Is it legal for a United States District Court to order 2 different Summary Judgments and two different final decisions in the same federal Habeas Petition?

5. Can a State Court trial judge add his own date on a verdict sheet which is different than the one entered on the verdict sheet by the Jury Foreperson?

6. The United States District Court declared that 314 days is a proper federal Speedy Trial period of time, is this legal?

7. Is it legal for a State Court to sentence me time served in a Florida State mental hospital?

8. A search and seize ordered in Marion County, Florida asked for 140 items for seize but the Sheriff's Department took 617 items, is this legal?

## PARTIES TO THE PROCEEDING

Petitioner, defendant-appellant is: Lemuel Robert Hall.

The names of all respondents do not appear in the caption.

Respondents are as follows:

1. United States District Court, Post Office Box 53558, Jacksonville, Florida 32201

2. Florida State Court of Appeals, 7th Judicial Circuit (appeals court for the Florida 5th judicial district), 300 S. Beach Street, Daytona Beach, Florida 32014

3. Circuit Court, 5th Judicial District, Marion County, Florida, Ocala, Florida.

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| 5. Fourteenth Amendment to the United States Constitution. | 1,2,3,4,5 |

## OPINION BELOW

The Opinion of the Court of Appeals for the 11th Circuit has been reported and is Reprinted in Appendix A. The opinion for the District Court for the Middle District of Florida have been reported and is reprinted in Appendix B. The opinion of the Florida State Court of Appeals has been reported and is reprinted in Appendix C. The opinion of The State Circuit Court has been reported and is reprinted in Appendix D.

## JURISDICTION

The judgment of the Court of Appeals for the 11th Circuit was entered July 22, 1997. This Court has jurisdiction to review that judgment by writ of certiorari pursuant to 28 U.S.C § 1254(1).

## STATEMENT OF THE CASE

On April 26, 1988 Wheaton Van lines Canceled my hauling contract as a contract owner/operator (trucker) and on May 4, 1988 Wheaton Van Lines had criminal charges filed on me for refusing to operate hauling interstate. I sat in jail without any pleminary hearings for 271 days while the charge on me changed several times.

On May 7, 1990, circuit court case #89-1713-CF-A-X was nolle prossed, then on May 10, 1990 I was prosecuted on that same case number. I was found guilty with a verdict sheet dated May 9, 1990 by the jury foreperson.

On May 18, 1990 I was sentenced to 5 years probation with credit of 271 days time served in which 122 days was incompetent time.

I appealed the case and the Daytona Beach State Appeals Court affirmed the decision. I then filed a Florida Statute 3.850 which was denied, then I appealed the denial of the 3.850 motion, which was also denied.

I then filed a Habeas Corpus in the United States District Court in Jacksonville, Florida; On September 21, 1993 the U.S.D.C. ordered me to answer a Summary Judgment, Doc#3 was denied for the respondents August 4, 1995.

On August 11, 1995 The respondents filed a second Summary Judgment motion, and on August 21, 1995 the court ordered me to answer the second Summary Judgment motion filed by the respondents. The second Summary Judgment was granted for the respondents by way of denial of my Habeas Corpus on October 3, 1996.

An interlocutory appeal was filed involving the 2 different Summary Judgment Orders was denied by the United States Court of Appeals, 11th circuit, on April 23, 1996.

On October 3, 1996 The Petition for Habeas Corpus was denied and my request for appeal or certification for appealibility was

denied per amendments to U.S.C. 2244, 2253, 2254, 2255, appellate rule 22 and 21 U.S.C. 848(G).

The above law was signed by the President April 24, 1996 and therefore leaves the issue of probable cause in the air. The District Court in Jacksonville, Florida used this law to rule in their own matter and to cover up due process of law.

This federal Habeas Corpus has rules such as, "No Citations, state no cases." However the District Court in Jacksonville, Florida ordered the Petitioner to answer Summary Judgments which required quoting law.

The question of this case is whether or not due process of law means a fair trial, a proper case number, a properly dated verdict sheet, a proper court reporters certification, and can the petitioner be convicted on a case number nolle prossed 3 days earlier.

## REASONS FOR GRANTING THE WRIT

All items that use the heading of due process of law (14th Amendment to the U.S. Constitution) are at issue in this case.

United States District Court case number 93-124-Civ-Oc-20 and Federal Appeals Court case number 96-3455 is now law because final judgment has been entered.

This case now being law has reversed due process of law and has placed every court in power as an independent jurisdictional dictatorship.

This new law states that a court reporters certification is not needed on a trial transcript, a verdict sheet can bear a different case number than the trial transcript, a nolle prossed case number can go to trial, anyone can waive your rights for you without permission, there is no limit of time on a federal speedy trial statute, there are no rules on any search and seize, and a defendant can be sentenced to a State Mental Hospital which is adverse to Pettit v Penn, La. App. 180 So. 2d 66, 69 , Vaugn v. State, Tenn. Crim. App. 54, 456, S.W. 2d. 879, 883 , Pennoyer v. Neff 98, U.S. 733, 24 L.ed. 565. , Kazubowski v. Kazubowski 45, Ill. 2d. 405, 259, N.E. 2d. 282, 290.

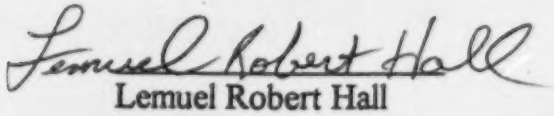
All the above and more is now law because of this case's final judgment. therefore the people of the United States of America no longer have due process of law.

The petitioner requests this Honorable Court to restore due process of law for the citizens of the United States of America.

## CONCLUSION

The petition for a writ of Certiorari should be granted.

Respectfully submitted this 1st day of November, 1997



Lemuel Robert Hall
ProSe
1337 N. Hwy 71
De Queen, Arkansas 71832

(870)-386-7946

**APPENDIX A**

**Corrected Reprint**

*Appeal from the U.S.D.C for the Middle District of Florida, Joseph W. Hatchett, Chief Judge Presiding.*

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 96-3455

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LEMUEL ROBERT HALL,

Petitioner-Appellant,

versus

DARREL JACOBS, Department of Corrections; ROBERT A. BUTTERWORTH, Attorney General,

Respondents-Appellees.

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Appeal from the United States District Court for the

Middle District of Florida

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ORDER:

Appellant's notice of appeal, construed as a motion for a certificate of probable cause, is **DENIED.**

/s/Joseph W. Hatchett

Chief Judge

## APPENDIX B

*Order Denying Writ of Habeas Corpus Entered by U.S.D.C, Harvey E. Schlisenger, United States District Court Judge presiding.*

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

LEMUEL ROBERT HALL,
Petitioner,

VS. Case No. 93-124-Civ-Oc-20

DARREL JACOBS, etc.; et al,

Respondents.

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**ORDER DENYING THE PETITION**

**I. Status and procedural History**

Petitioner Lemuel Robert Hall filed a petition for writ of Habeas Corpus pursuant to 28 U.S.C. §2254 (Doc. #1) (hereinafter Petition) on July 23, 1993. Petitioner seeks relief from his 1990 state court conviction for grand theft. He challenges the conviction on the following grounds: (1) double jeopardy; (2) illegal search and seize; (3) invalid verdict form; and (4) "no grand jury or speedy trial rights allowed."

Petitioner was charged with grand theft in an amended Information, case number 89-1712-CF-A-W, filed in Circuit Court of

the Fifth Judicial Circuit of Florida, in and for Marion County (hereinafter Marion County Circuit Court) on May 7, 1990. response to Show Cause/Motion for Summary Judgment (hereinafter response) (Doc. #22), filed August 11, 1995, at Appendix (hereinafter App.) II. He was tried by jury on May 10, 1990 and was found guilty as charged. Id. at App. III and XV. On June 18, 1990, the trial court withheld adjudication of guilt and placed the petitioner on five years probation. Id. at App.IV.

Petitioner appealed his conviction to the Fifth district Court of Appeal of the State of Florida. The court affirmed Petitioner's conviction and order of probation per curiam on January 8, 1991. response at 2; Hall v. State, 573 So.2d 8 (Fla. 5th DCA 1991). In his appeal, Petitioner presented the same speedy trial issue that he raises in ground three of the petition. Supplememtal response to Order to Show Cause/Motion to Dismiss (Doc. #36) (hereinafter Supp. response), filed August 8, 1996, at Supp. App. I.

On April 12, 1993, Petitioner filed a "Writ of Error Coram Nobis Brief in Support of Arrest of Restitution" in which he challenged the trial court's order of restitution, and presented the issue he raises in grounds one and two of the Petition. Id. at Supp. App. VI. The Marion County Circuit Court denied this "writ" on June 8, 1993. Id at Supp. App. VII. Petitioner prematurely filed a

"Notice of Appeal of Denial of Writ of Error Coram Nobis Brief in Support of Arrest of Restitution" on May 27, 1993 Id. at Supp. App. VIII. respondents assert that the appellate court "summarily affirmed the order of the trial court." Supp response at 3. However, the order Respondents cite in support of this contention appears to affirm the denial of a Rule 3.850 motion. Id. at Supp App. X.

On April 20, 1993, Petitioner filed a "Notice of Appeal of Denial of 3.850 and or 3.800" in which he appeals "the order and Judgment of Defendants 3.850 and or 3.800 motion that was DENIED 5-13-93." Id. at Supp. App. IV. However, Respondents state that "[t]here was no written order issued on May 13, 1993. Petitioner's Notice may be referring to oral pronouncements made at the May 13, 1993 restitution hearing." Supp. response at 2. This appeal was dismissed on September 21, 1993, because petitioner failed to pay the filing fee. response at App. XII.

On June 8, 1993, the Marion County Circuit Court issued an order denying Petitioner's two motions for post-conviction relief. Supp. Response at Supp. App. III. With regard to the March 11, 1992, motion, Petitioner had alleged that "his sentence was in error as the foreperson of the jury erroneously marked the wrong date on the jury form which was corrected by the trial judge." Id The court found that "the erroneous date is merely a clerical error which did not

effect the validity or intent of the jury verdict." Id. The April 20, 1993, motion was denied because it was facially insufficient, not in the form set forth by rule 3.850, Fla.R.Crim.P., and unsworn. Id.

On June 18, 1993, the Marion county Circuit Court issued an amended order denying Petitioner's two rule 3.850 motions, which reiterated the findings of the June 8, 1993 order. Id. at Supp. App. V. respondents state that "[n]o notice of appeal was filed from this amended order." Supp response at 3. However, it appears Petitioner appealed one of the two orders denying his Rule 3.850 motions to the Fifth District Court Appeal and the order was affirmed per curiam on July 13, 1993. Id. at Supp App. IX and X; Hall v. State, 621 So.2d 1087 (Fla. 5th DCA 1993).

On June 23, 1993, Petitioner filed two motions to correct an illegal conviction and sentence pursuant to Rule 3.800, Fla.R.Crim.P., presenting the same issues he raises in grounds one, two, and four of the Petition. Supp response at Supp App.XII and XIII. Apparently, these motions were dismissed because the Petitioner failed to pay the required filing fee. See response to Court Order dated Oct. 15, 1993, and Motion to Stay This Case for 30 days (Doc. #9), filed Oct 27, 1993, at 1; response to this Instant Court Order dated July 10, 1996 (Doc. #37), filed August 19, 1996, at 4; response at 4.

Petitioner filed a petition for writ of habeas corpus with this Court on October 3, 1991. response at App.IX. The petition was dismissed on May 20, 1992, to allow Petitioner to exhaust his remedies in State Court. Id. On June 17, 1993, the Court dismissed a second petition filed by the petitioner, again to allow Petitioner to exhaust his state remedies. Id. at App. X.

Petitioner filed the present Petition with this Court on July 23, 1993. On August 11, 1995, Respondents filed their Response to Order to Show Cause/Motion for Summary Judgment (Doc. #22). On August 21, 1995, Petitioner filed his response to Respondent's Answer to Order to Show cause/Motion for Summary Judgment (Doc. #24), but failed to include any supporting affidavits or documents. Therefore, the Court notified the Petitioner of the Summary Judgment rules and how to properly respond to a motion for Summary Judgment. See Court Order (Doc.#25), filed August 21, 1995, and Motion to Dismiss Summary Judgment (Doc. #26). On July 10, 1996, the Court Ordered respondents to Supplement their Response. See Court Order (Doc.#35), filed July 10, 1996. On August 8, 1996, respondents filed a Supplemental Response to Order to Show Cause/Motion to Dismiss (Doc. #36). On August 19, 1996, Petitioner filed his response to respondents' Supplemental Response

(Doc.#37). Petitioner Filed a Supplemental Response (Doc. #39) On October 1, 1996.

**II. Ground 1/ Double Jeopardy**

Respondents alledge that Petitioner's double jeopardy claim is procedurally barred. With regard to procedural bar, there are two basic prerequisites to a federal habeas review: (1) "the applicant must have fairly apprised the highest court of his state with the appropriate jurisdiction of the federal rights which allegedly were violated," and (2) "the applicant must have presented his claims in state court in a procedurally correct manner." Upshaw v.Singletary, 70 F.3d 576, 578 (11th Cir. 1995). A state prisoner seeking federal habeas corpus relief, who fails to raise his federal constitutional claims in state court, or who attempts to raise claims in a manner not permitted by state procedural rules, is barred from pursuing the same claim in federal court absent a showing of cause for actual prejudice from default." Marek v Singletary, 62 F.3d 1295, 1301 (11thCir. 1995) (citation omitted). Petitioner's pro se status does not alone amount to good cause. See Harmon v. Barton, 894 F.2d 1268, 1275 (11th Cir.), Cert. denied, 498 U.S. 832 (1990).

The Eleventh Circuit has summarized the procedural default doctrine:

Pursuant to the doctrine of procedural default, a state prisoner seeking federal habeas corpus relief, who fails to raise his federal constitution[al] claim in state court, or attempts to raise it in a manner not permitted by state procedural rules is barred from pursuing the same claim in federal court absent a showing of cause for and actual predjudice from the default. Wainwright v Sykes, 433 U.S. 72, 87, 97 S.ct 2497, 2506, 1567, 1580 (11th Cir 1988). "[W]here a state court correctly applies a procedural default principle of state law, Sykes requires the federal court to abide by the state court decision." Harmon v. Barton, 894 F.2d 1268, 1270, (11th Cir.), Cert. denied, 498 U.S. 832, 111 S.Ct. 96, 112 L.Ed.2d 68 (1990).

A federal court is not required to honor a state procedural ruling unless the ruling rests on an independent and adequate state ground. Harris v. reed, 489 U.S. 255, 262, 109 S.Ct. 1038, 1043, 103 L.Ed.2d 308 (1989). Consequently, "a procedural default does not bar consideration of a federal claim on either direct or habeas review unless the last state court rendering a judgment in the case 'clearly and expressly' states that its judgment rests on a state procedural bar." Id. at 263, 109,

> S.Ct. at 1043. However, should a state court reach its merits of the claim. County Court of Ulster County v. Allen, 442 U.S. 140, 148-49, 99 S.Ct. 2213, 2220, 60 L.Ed2d 777 (1979); Dobbert v. Strickland, 718 F.2d 1518, 1524 (11th Cir. 1983) cert. denied, 468 U.S. 1220, 104 S.Ct. 3591, 82 L.Ed.2d 887 (1984). Where it is unclear whether the state court has reached the merits of the claim, problems in applying the independent and adequate state ground doctrine may arise. Dobbert, 718 F.2d 985, 898 (11th Cir. 1989), cert. denied, 492 U.S. 934, 110 S.Ct. 17, 106 L.Ed2d 631 (1989).

Alderman v. Zant, 22 F.3d 1541, 1549 (11th Cir.), cert. denied, 115 S.Ct. 673 (1994).

Petitioner's double jeopardy claim was not raised on direct appeal. However, petitioner raised this issue in his April 20, 1993, Rule 3.850 motion. the trial court denied the motion because it was facially insufficient, not in the form set forth by Rule 3.850, Fla.R.Crim.P., and unsworn. the appellate court affirmed the ruling of trial court per curiam. Petitioner also raised this issue in his June 23, 1993, motion for relief filed pursuant to Rule 3.800, Fla.R.Crim.P. This motion was dismissed because Petitioner failed to

pay the filing fee. Therefore, Petitioner's claim is procedurally barred.

Assuming arguendo, Petitioner's claim is not procedurally barred, the Court finds it is without merit. Petitioner claims that he was subjected to double jeopardy. Petition at 5. In support of this claim, Petitioner provided the court with a copy of a document entitled NOLLE PROSQUI, filed May 9, 1990, in the Marion County Circuit Court. Response to Order to Answer Summary Judgment Dated 21st day of August 1995, and Motion to dismiss Summary Judgment (Doc. #26) (hereinafter Response to Summary Judgment), filed September 6, 1995, at Exhibit C. This Document refers to case number 89-1713-CF-A-X, and declares that the state of Florida "enters its announcement of nolle prosqui against the Defendant, LEMUEL ROBERT HALL, in the above entitled cause based on the following grounds: Case with victim Mark Holland will be tried. That case will adequately settle this case." Id.

Petitioner was tried by jury in case number 89-1712-CF-A-W on May 10, 1990. Response at App. XV. The cover page to the trial transcript incorrectly identifies the case by case number 89-1713-CF-A-X. Id. at App. III. Although unclear, Petitioner appears to claim that he should not have been tried in case number 89-1712-CF-A-W because his charges had already been disposed of

by nolle prosquai in case number 89-1713-CF-A-X. Petition at 5. He also claims that his appeal was invalid because the cover page to the trial transcript forwarded on appeal was identified by the wrong case number, and the state can not produce a transcript with the correct case number. Id.

These arguments are clearly frivolous and without merit. From an examination of the record, it is clear that the state elected to proceed in case number 89-1712-CF-A-W and, consequently, entered its announcement of nolle prosquai in case number 89-1713-CF-A-X. Therefore Petitioner was never "subject for the same offense to be twice put in jeopardy of life or limb" in violation of Double Jeopardy Clause. U.S. Const., Amend. V.

Clearly, the appellate court considered the proper transcript even though the cover page reflects the wrong case number. The verdict form and the order form Withholding Adjudication of Guilt and placing the Defendant on Probation identify the case by the correct case number, 89-1712-CF-A-W. See Response, App. XV and IV. Petitioner's claim is without merit.

**III. Ground 2/ Illegal Search and Seizure**

Petitioner was an interstate truck driver, working for Wheaton Van Lines, at the time the theft occurred. Response, App. III at 91-100. Petitioner was convicted of grand theft of household

goods owned by Mark Holland and moved by the Petitioner. Id. at App II and XX. Petitioner's claim is procedurally barred. Petitioner did not raise this issue on direct appeal. In fact, Petitioner claimed, both at trial and on direct appeal, that he had off loaded part of the shipment in question and stored these items on his property in Ocala, Florida in order to make repairs to his moving van. Id., App. III at 100-02; Id. at App. VI.

Petitioner raised this claim in his April 20, 1993, Rule 3.850 motion. The trial court denied the motion because it was facially insufficient, not in the form set forth by rule 3.850, Fla.R.Crim.P., and unsworn. The appellate court affirmed the ruling of the trial court per curiam. Petitioner also raised this issue in his June 23, 1993, motion for relief filed pursuant to Rule 3.800, Fla.R.Crim.P. This motion was dismissed because Petitioner failed to pay the filing fee. Therefore, petitioner's claim is procedurally barred.

Assuming arguendo, Petitioner's claim is not procedurally barred, the Court finds that consideration of this claim is barred under Stone v. Powell, 428 U.S. 465 (1976).

> Since this ground for relief arises under the fourth amendment exclusionary rule, however, our power to grant habeas corpus relief depends on whether [Petitioner] was afforded a full and fair

> opportunity to litigate this issue in the state courts of [Florida].
>
> .....
>
> In Stone v. Powell, the Supreme Court held: (W)here the state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search and seizure was introduced at his trial.
>
> .....
>
> An "opportunity for full and fair litigation" means just that: an opportunity. If a state provides the processes whereby a defendant can obtain full and fair litigation of a fourth amendment claim, Stone v. Powell bars federal habeas corpus consideration of that claim whether or not the defendant employs those processes.

Carver v. Alabama, 577 F.2d 1188, 1191-92 (5th Cir. 1978) (Citations omitted).

"In this circuit, we have construed Stone v. Powell to bar consideration of a Fourth Amendment claim if the state has provided an opportunity for full and fair litigation of the claim 'whether or not the defendant employs those processes.'" Huynh v. King, No. 93-8398, 1996 WL 506268 (11th Cir. Sept. 23, 1996) Citation

omitted)(Footnote omitted). "[A]ctual state court consideration [is] not required for Stone v. Powell preclusion where habeas petitioner has missed 'opportunity' to litigate by failing to raise claim at trial or on direct appeal." Agee v. White, 809 F.2d 1487, 1490 (11th Cir.1987) (Citation omitted). Because the petitioner failed to raise this issue at trial or on direct appeal, this Court is precluded from considering his claim.

**IV. Ground 3/ Tampered Verdict Form**

Respondents alledge that Petitioner's claim is procedurally barred. Petitioner failed to raise this issue on direct appeal, however, he raised this claim in his March 11, 1992, Rule 3.850 motion. The trial court denied the motion on the merits, finding that the erroneous date on the verdict form was merely "a clerical error which did not effect the validity or intent of the jury verdict." Response at App. III. Therefore, Petitioner's claim is not procedurally barred.

Petitioner appears to claim that his verdict is invalid because the form was erroneously dated May 9, 1990, and then later corrected to read May 10, 1990. Petition at 6. This court concurs wit the finding of the Marion County Circuit Court, that the erroneous date was merely a clerical error which did not effect the validity or intent of the jury verdict. This claim is clearly without merit.

V. Ground 4/ No Grand Jury and No Speedy Trial

Petitioner makes two allegations under ground four. First, he states that no grand jury hearing was conducted in his case "to determine if there should be a trial." Petition at 6. Respondents alledge that Petitioner's claim is procedurally barred. Petitioner failed to raise this issue on direct appeal, however, he raised this claim in his June 23, 1993, motion for relief filed pursuant to Rule 3.800, Fla.R.Crim.P. This motion was dismissed because Petitioner failed to pay the filing fee. Therefore, Petitioner's claim is procedurally barred.

Assuming arguendo, Petitioner's claim is not procedurally barred, the Court finds it is without merit. "In Florida, indictments are required only for prosecution of capital offenses. Prosecutors may charge all other crimes by information, without a prior prememinary hearing and without obtaining leave of court. Fla.Rule Crim.Proc. 3.140(a); State v. Hernandez, 217 So.2d 109 (Fla. 1968); Di Bona v. State, 121 So.2d 192 (Fla App. 1960)." Gerstein v .Pugh,420 U.S. 103, 105 (1975). Petitioner was not charged with a capital crime. See section 812.014, Florida Statutes (1987). Therefore, Petitioner's first claim is without merit.

respondents assert that the second issue raised under this ground is not procedurally barred. Petitioner contends that his right

to a speedy trial was waived by his attorney without his consent. Although unclear, it appears Petitioner also claims that his counsel was ineffective in waiving his right to a speedy trial. Motion to Answer to Order for Summary Judgment (Doc. #6), filed October 14, 1993, at 3.

With regard to the speedy trial claim, the following facts are germane. Petitioner was arrested on July 22, 1989. response at App. XX. Petitioner's attorney filed a request for a continuance on Novenber 3, 1989, in order to complete Petitioner's psychological evaluation. response at App. XIX. Petitioner's attorney stated that Petitioner waived his right to a speedy trial for the period of this continuance. Id. On December 1, 1989, the court found the Petitioner "incompetent to stand trial due to mental illness as defined in F.S. 916.106(7)." Id. The court order stated that the speedy trial requirements were "temporarily suspended" pursuant to Rule 3.191, Fla.R.Crim.P. Id. Petitioner was "committed to the Department of Health and rehabilitative Services, to be placed in a mental health treatment facility." Id.

On February 12, 1990, the Marion County Circuit Court issued an "Order to transport," which states, in pertinent part:

> The Court having been advised by the Department of Health and rehabilitative Services by

> and through the Forensic Service Director at Florida State Hospital, Chattahoochee, Florida, that the above Defendant is competent to (stand trial)(be sentenced) within the meaning of F.R.Cr.P. 3.211; therefore, it is hereby ORDERED AND ADJUDGED:
>
> 1. That the Sheriff shall forwith take the Defendant into custody and return him to Marion County for a hearing on the issues raised by the Forensic Service Director's report.

Supp. response App. XVII.

On April 3, 1990, the court adjudged the Petitioner competent to stand trial and ordered that he be "discharged and released from commitment within the Department of Health & rehabilitative Services." Id. at Supp. App. XVIII. Petitioner was tried on May 10, 1993.

Florida law provides that every person charged with a felony shall be brought to trial within 175 days from the date that person is taken into custody. Rule 3.191(a), Fla.R.Crim.P. The court, in a written or recorded order, may extend this period upon "motion by either party in exceptional circumstances" or sua sponte "for a period of reasonable and necessary delay resulting from proceedings including but not limited to an examination and hearing to determine

the mental competency . . . of the defendant to stand trial. Rule 3.191(i), Fla.R.Crim.P.

Even if the continuance was obtained by the petitioner's attorney without the Petitioner's knowledge, consent, or approval, the continuance waiver of a speedy trial rights is binding on the Petitioner under Florida law. McArthur v. State, 303 So.sd 359, 360 (Fla. 3d DCA 1974).

Therefore, the period from November 3, 1992 (the date Petitioner's attorney filed a request for a continuance in order to complete Petitioner's psychological evaluation) to April 3, 1993 (the date the court found Petitioner competent to stand trial) is excluded from the speedy trial computation. Excluding this 151 day delay resulting from proceedings regarding Petitioner's mental competency, the time period from the date Petitioner was arrested to the date he was brought to trial was 163 days. Therefore, Petitioner was not denied his right to a speedy trial under Florida law.

The Eleventh Circuit Court of Appeals has recently reiterated the test for evaluating speedy trial challenges under federal law.

> Speedy trial challenges are subject to a four-factor test established by the Supreme Court in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed2d 101 (1972). The factors are:(1) the length of the

> delay; (2) the reason for the delay; (3) the defendant's assertation of the speedy trial right; and (4) Prejudice to the defendant. 407 U.S. at 530, 92 S.Ct. at 2192.

United States v. Clark, 83, F.3d 1350, 1352 (11th Cir. 1996).

the length of the delay must be "presumptively prejudicial" in order to trigger an inquiry into the other three factors. Id. Under circumstances of this case, a delay of 314 days is not presumptively prejudicial because proceedings regarding Petitioner's mental competency were pending during 163 of those 314 days. Therefore, the Court need not address the remaining three factors. Petitioner's speedy trial claim is without merit.

Petitioners claim of ineffective assistance of counsel is governed by the two-part test announced in Strickland v. Washington, 466 U.S. 668, 687 (1984). In examining any ineffective assistance of counsel claim, the Court looks to the two prong test as outlined in Strickland:

> A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction. . . has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as

> the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction. . . . resulted from a breakdown in the adversary process that renders the result unreliable.

Id.; accord chatom v. White, 858 F.2d 1479 (11th Cir. 1988), cert. denied, 489 U.S. 1054 (1989); Stevenson v. Newsome, 774 F.2d 1558, 1563 (11th Cir. 1985), cert. denied, 482 U.S. 1089 (1986); Fleming v. Kemp, 748 F.2d 1435, 1446 (11th Cir. 1984), cert. denied, 475 U.S. 1058 (1986). Of course, both prongs of the test must be satisfied.

Petitioner must identify facts which, if true, will substantiate his claims. See Porter v. Wainwright, 805, F.2d 930, 933 (11th Cir. 1986), cert. denied, 482 U.S. 918, 919 (1987); Agan v. Dugger, 835 F.2d 1337, 1338 (11th Cir. 1987), cert. denied, 487 U.S. 1205 (1988) (a petitioner must demonstrate specific facts that, if proved, would entitle him relief in order to necessitate an evidentiary hearing). With regard to an ineffective assistance of counsel claim, Petitioner must alledge "specific prejudice arising out of claimed errors. . . . ."

United States v. Hatterman, 853 F.2d 555, 559 n.9 (7th Cir. 1988). Claims which are mere conclusory allegations unsupported by specifics or contentions which in the face of the record as a whole are incredible will not entitle a petitioner to an evidentiary hearing. Tejada v. Dugger, 941 F.2d 1551, 1559 (11th Cir. 1991), cert. denied, 502, U.S. 1105 (1992).

Petitioner has not satisfied either prong of the Strickland test. He has completely failed to alledge facts to support his conclusionary allegation of ineffective counsel. Even if counsel's performance was deficient, Petitioner has neither alledged nor shown that the waiver of his right to a speedy trial for the period of the continuance prejudiced his defense. therefore, Petitioners ineffective assistance of counsel claim must fail.

Any claims not specifically addressed herein are found to be without merit. For all of the above stated reasons, respondents' response and Supplemental response, in which they request the Court to deny the Petition, will be granted.

Therefore, it is now **ORDERED:**

1. Respondents' August 11, 1995 response to Order to Show cause/Mition for Summary Judgment (Doc. #22), and respondents' August 8, 1996, Supplemental Response to Order to

Show Cause/Motion to Dismiss (Doc. #36), in which Respondents request the Court to deny the Petition, are **GRANTED.**

2. The Petition is **DENIED.**

3. The clerk of the Court shall enter judgment accordingly and close this case.

**DONE AND ORDERED** at Jacksonville, Florida, this 3rd day of October 1996

*/s/ Harvey E. Schlesinger*
UNITED STATES DISTRICT JUDGE

## APPENDIX C

*Decision entered by Florida State Circuit Appeals Court Affirming the trial court's decision without stating cause. Judges Cowart, Goshorn and Peterson, and JJ. Presiding.*

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

LEMUEL ROBERT HALL,

Appellant,

v. Case No. 90-1510

STATE OF FLORIDA,

Appellee.

_____/

Decision filed January 8, 1991

Appeal from the Circuit Court for Marion County, William T. Swigert, Sr., Judge.

James B. Gibson, Public Defender, and Daniel J. Schafer, Assistant Public Defender, daytona Beach, for Appellant.

Lemuel Robert Hall, DeQueen, Arkansas, pro se.

Robert A. Butterworth, Attorney General, Tallahassee, and Anthony J. Golden, Assistant Attorney general, daytona Beach, for Appellee.

**PER CURIAM.**

**AFFIRMED.**

**COWART, GOSHORN AND PETERSON, JJ., CONCUR.**

## APENDIX D

*Tampered verdict sheet entered into records by trial court clerk 3 hours and six minutes prior to the conclusion of the trial, dated one day before the trial by the jury foreperson, and re-dated by presiding Chief Circuit Judge William T. Swigert.*

IN THE CIRCUIT COURT OF
THE FIFTH JUDICIAL
CIRCUIT, IN AND FOR
MARION COUNTY, FLORIDA

CASE NO: 89-1712-CF-A-W

STATE OF FLORIDA,
Plaintiff,

FILED
1990 MAY 10 AM 11 54
CLERK CIRCUIT COURT

vs.

LEMUEL ROBERT HALL,
Defendant.
_____/

## VERDICT

We, the Jury, find as follows, as to the defendant in this case: (check one only)

/s/ X a. The Defendant is Guilty of Grand Theft.

_____b. The defendant is not guilty.

/s/ Dated 5/9/90

/s/ A.J. Daygler
Foreperson

/s/ 5/10/90